

**Edward M. Pikula**  
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**THE CITY OF SPRINGFIELD, MASSACHUSETTS**

February 1, 2010

Domenic J. Sarno, Mayor  
City of Springfield  
36 Court Street  
Springfield, MA 01103

*Re: Proposal for changes to Community Review of Police*

Dear Mayor Sarno:

As per your request, I forward a proposal for changes in the manner of Community Review of citizen complaints involving Springfield Police Officers. This proposal is as a result of your request on January 11, 2010 for an expedited review and proposal of such changes. Specifically, you requested that the Law Department propose an increased role for the community to play in the discipline of police officers charged with misconduct as a result of citizen complaints. As you know, the Community Complaint Review Board, (CCRB) pursuant to its responsibility under the Executive Order establishing it, has reviewed the executive order governing its activities and has been discussing options amongst its members; legal counsel; and the public for improving the process and increasing the impact on the community.

The CCRB issued a recommendation and report on December 9, 2009 and held a public hearing on its draft suggestions on that date. In addition, a public meeting was held by the NAACP on January 25, 2010 which was attended by yourself, members of your staff, representatives of the Police Department and the Law Department to obtain input from the community. That public meeting was held as a result of a meeting held in your office with NAACP Board members, Commissioner Fitchet and the City Solicitor.

You have met with some members of the City Council, and the Law Department has reviewed the past management study conducted on the Police Department as well as the study conducted by experts Professor Jack McDevitt of Northeastern University and his Associate, Dr. Amy Farrell, pursuant to the as a result of the complaint filed by the Pastor's Council with the MCAD.

In addition, the Law Department has reviewed some models used in cities across the country; has met with the Police Commissioner; reviewed the contract between the Police Commissioner and the City; met with the Patrolmen's Union to discuss collective bargaining issues related to the issue; and reviewed applicable statutes and ordinances.

With this background, I am attaching a proposal for amending the existing Executive Order governing the CCRB.

The new Executive Order would establish a "Community Police Hearing Board". The proposal takes into account the input received from the community as well as the legal interests of all stakeholders in this issue. As such, the proposal attempts to balance all of the legal interests and concerns with the intent to minimize the risk of excessive use of force, while promoting the use of best available practices and procedures for police management under applicable laws and contractual obligations.

The proposed Executive Order will create a new Board with authority to review, and recommend discipline of Police Officers where warranted, on all civilian complaints involving allegations of harassment; use of unreasonable or excessive force; use of language that is insulting, demeaning or humiliating; discriminatory treatment based on a person's race, color, religion, national origin, sex, age, sexual orientation or disability; or retaliation against a person for filing a citizens complaint.

Under the Executive Order the Board will consist of 7 members who will act individually (or in panels of three typically found in arbitration cases) as hearing officers. The members will require training as hearing officers who Commissioner Fitchet will designate to conduct disciplinary hearings and make findings on citizen complaint cases. Upon submission of findings from the hearing officer(s), the Board will be authorized to recommend to the Commissioner discipline to be imposed, such as suspension and including termination, on all cases under its jurisdiction.

The Board will be subject to the Open Meeting Law, which provides that disciplinary hearings are open or closed at the option of the employee.

In addition, the Board will play an important outreach role in educating the community of the opportunity to file a complaint, public dissemination of information as to how and where to file, and the rights of the community in dealing with the police.

After a complaint is closed the Board shall promptly notify the complainant of the findings and may provide copies of any portions of the internal affairs file which are a public record. Any actual order of disciplinary action addressed to an officer is not a public record, and shall not be disclosed by the Board.

In addition, the Board will play a role in maintaining records of citizen complaints filed and reviewed, and disseminate the information to the community in a format that respects the confidentiality requirements of any employment disciplinary process. These statistics,

will not only be available for public dissemination on a regular basis, but will be available to the Police Commissioner to utilize in making policy decisions.

By way of background it must be noted that the discipline of Police Officers is controlled by Civil Service law found in Mass. Gen. Laws, chapter 31. Except for just cause and except in accordance with the provisions of Section 41 of the state Civil Service law, a police officer shall not be discharged, removed, suspended for a period of more than five days, laid off, transferred from his position, lowered in rank or compensation without his written consent, nor his position be abolished.

Before any such action is taken, the Civil Service law requires that a police officer shall be given “a written notice by the appointing authority, which shall include the action contemplated, the specific reason or reasons for such action” and a copy of the applicable Civil Service law as well as “a full hearing concerning such reason or reasons before the appointing authority or a hearing officer designated by the appointing authority”.

Under existing City Ordinances, the Police Commissioner has authority to appoint, establish and organize the police department of the city as well as control of the government, administration, disposition and discipline of the police department. This organization follows the modern trend of organization and management of police departments in major urban areas. Under the current Ordinances and state law provisions found, for example, in General Law, Chapter 48, Section 108O which provides for employment contracts for public safety department heads.

The City has contracted with Police Commissioner Fitchet, and he acts as the “appointing authority” under the Civil Service statutes pursuant to his employment contract. This contract was negotiated with the Commissioner upon his appointment and was executed in consideration of his agreement to remove his employment from Civil Service, and is protected by law.

By authorizing the Board to act as a hearing officer and make findings as to whether the complaint is sustained, and recommendations as to the discipline to be imposed, the Executive Order increases the role of the Community in the discipline of police officers charged with misconduct as a result of citizen complaints, yet preserves the organization established by Ordinance under the provisions of state law and the contractual obligations with Commissioner Fitchet as the head of the Police Department. A return to the former organization at this time would result in a breach of contract and violation of state law.

Under the City’s Collective Bargaining Agreements with the Patrolmen’s and Supervisor’s Unions, as well as the provisions of Mass. Gen Law chapter 150E, the City is under an obligation to negotiate in good faith with respect to any changes to the terms and conditions of employment, but such obligation does not compel either party to agree to a proposal or make a concession. As such, the implementation of changes must take into account the collective bargaining provisions which limit the City’s right to charge patrolmen with disciplinary offenses within the 90 days of the incident arising and to hold

a hearing with 60 days of the notice of charges. The Executive Order proposal would be in compliance with the collective bargaining agreements.

The best means of accomplishing the purposes of the Executive Order, within the existing statutory and contractual constraints, is to utilize a process of qualified Hearing Officers with authority to conduct hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath and in connection therewith, to require the production of any evidence relating to any matter in question.

Under Civil Service law, the Appointing Authority is authorized to designate a hearing officer. This process is currently utilized, and typically, the Hearing Officer is a Captain or Deputy Chief. However, it is not uncommon for the Police Commissioner to designate an attorney who is retained solely for the purpose of conducting a hearing and making findings. The proposed Ordinance incorporates this process of utilizing hearing officers, but requires that a Board member act individually or the Board as a panel (typically in groups of three as commonly found in arbitration cases) as Hearing Officers which the Police Commissioner will designate to carry out the required hearing under Civil Service law.

This process assures that any Hearing Officer on a citizen's complaint has the approval of the Board, as well as the approval of the Commissioner. The process will benefit from disinterested, impartial and qualified hearing officers, and will meet the requirements of state law as well as existing contractual obligations.

The proposal requires that the chairperson of the Board be an Attorney with experience in administrative procedures so that the chair can provide leadership pursuant to the rule of law. In addition, all Board members will be required to go through training on how to conduct administrative hearings. Prior to making any recommendation for discipline, the Hearing Officer will be required to consider the work history of the officer including commendations or other exemplary acts of service to the community and provide the officer a opportunity to speak personally or through a representative as to the issue of disposition of the case.

It is important that any effort to implement changes be provided sufficient resources to carry out its task. As such, the Executive Order provides that staff of the personnel, labor relations, law department, and Citistat, subject to appropriation, will be available to provide support.

It is my suggestion that the vacant paralegal position in Labor Relations (which continues its staffing efforts since its reinstatement as a City Department after the fiscal crisis) be funded in order to add capacity to carry out some of the required duties. Moreover, the Labor Relations department has recently filled a vacancy with an attorney formerly employed by the Commonwealth of Massachusetts Human Resources Division. As such, the Labor Relations Department will be able to carry out the prosecution of disciplinary matters before the Hearing Officers and the Law Department can provide legal advise to the new Board.

This change will more fully integrate the discipline into the City's personnel practices, while maintaining independence of the administration of specific cases by the Board, yet maintaining overall policy control through the Mayor's appointing authority traditionally held under the City's Plan A "strong mayor" form of government.

Finally, the new Executive Order authorizes the Board to establish a voluntary mediation process in an attempt to facilitate an alternative means of dispute resolution.

In is the opinion of the Law Department that the recommended Executive Order will increase police accountability to the community, while assuring professional management of the Police Department.

If you have any questions do not hesitate to contact me.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Edm. Pikula", with a stylized flourish at the end.

Edward M. Pikula,  
City Solicitor